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* APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,146	05/25/2001	Anthony E. Bolton	033136-182	8192

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EXAMINER

CHERNYSHEV, OLGA N

ART UNIT	PAPER NUMBER
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1646

DATE MAILED: 02/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/871,146

Applicant(s)

BOLTON ET AL.

Examiner

Olga N. Chernyshev

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-19 and 33-46 is/are pending in the application.
- 4a) Of the above claim(s) 33-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 16-19 is/are rejected.
- 7) ☒ Claim(s) 19 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9, 13.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Response to Amendment

1. Claims 16 and 17 have been amended and claims 20-32 have been cancelled as requested in the amendment of Paper No. 11, filed on November 22, 2002. Claims 16-19 and 33-46 are pending in the instant application.

Claims 33-46 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions for reasons of record in section 2 of Paper No. 8.

Claims 16-19 are under examination in the instant office action.

2. The Text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Any objection or rejection of record, which is not expressly repeated in this action has been overcome by Applicant's response and withdrawn.

4. Applicant's arguments filed on November 22, 2002 have been fully considered but they are not deemed to be persuasive for the reasons set forth below.

Priority

5. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Canada on 05/25/2000. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

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Claim Objections

6. Claim 19 stands objected to for reasons of record in section 4 of Paper No. 8. Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. Claim 19 stands rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention for those reasons of record in section 5 of Paper No. 8.

Applicant submits that the deletion of the objected language of claim 17 obviates this ground of rejection (page 4, last paragraph of the Response). However, claim 19 is an independent claim, therefore, the amendment of claim 17 did not affect the claimed subject matter of claim 19.

New ground of rejection necessitated by amendment

Claim Rejections - 35 USC § 102

8. Claims 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Bombeli et al. (1997, Blood, Vol.89, No.7, pp.2429-2442, reference #2, IDS of Paper No. 3).

Claims 16-18, as amended, encompass a pharmaceutical composition comprising a pharmaceutically acceptable excipient and human apoptotic bodies and/or apoptotic cells. Bombeli et al. describe HUVEC (human umbilical vein endothelial cells) apoptotic cells (see p.2430, section Cell Culture and Apoptosis Induction). The HUVEC apoptotic cells of Bombeli

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et al. were kept in culture medium without heparin, serum, and growth factor (last sentence of Apoptosis Induction section, page 2430). Although Bombeli et al do not specifically disclose the concentration of apoptotic HUVECs during the period of time of storage before the cells were assayed by flow cytometry, one skilled in the art would reasonably conclude that the concentration was in the range of 10% to 90% of cellular material. Thus, publication of Bombeli et al. meets the limitations of claims 16 and 18.

Claim 17 encompasses a pharmaceutical composition of human apoptotic cells wherein such composition comprises no more than 35 weight percent necrotic cells or bodies. Bombeli et al. used staurosporin, an agent that is well known in the art to be used for specific induction of apoptosis. Moreover, the disclosure of Bombeli et al., including data and discussion, undoubtedly indicates that HUVECs used in the experiments were mostly apoptotic, with clearly less than 35% necrotic cells.

Conclusion

9. No claim is allowed.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. This application contains claims 33-46 drawn to an invention nonelected with traverse in Paper No. 7. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Olga N. Chernyshev whose telephone number is (703) 305-1003. The examiner can normally be reached on Monday to Friday 9 AM to 5 PM ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler can be reached on (703) 308-6564. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 782-9306 for regular communications and (703) 782-9307 for After Final communications.

Certain papers related to this application may be submitted to Technology Center 1600 by facsimile transmission. Papers should be faxed to Technology Center 1600 via the PTO Fax center located in Crystal Mall 1 (CM1). The faxing of such papers must conform with the notices published in the Official Gazette, 1156 OG 61 (November 16, 1993) and 1157 OG 94 (December 28, 1993) (see 37 C.F.R. § 1.6(d)). NOTE: If Applicant *does* submit a paper by fax, the original signed copy should be retained by Applicant or Applicant's representative. NO DUPLICATE COPIES SHOULD BE SUBMITTED so as to avoid the processing of duplicate papers.

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Official papers filed by fax should be directed to (703) 308-4556 or (703) 308-4242. If either of these numbers is out of service, please call the Group receptionist for an alternative number. Faxed draft or informal communications with the examiner should be directed to (703) 308-0294. Official papers should NOT be faxed to (703) 308-0294.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Olga N. Chernyshev, Ph.D.
February 6, 2003

OC


JOHN ULM
PRIMARY EXAMINER
GROUP 1800